

REMARKS

The Office Action of July 9, 2004 was received and carefully reviewed. Claims 1-36 were pending in this application. By this Amendment, claims 1, 6, 9, 13, 14, 16, 21, 24, 28, 31, 32, 34, and 35 are amended. Support for these amendments can be found throughout the specification, for example, on page 8, lines 4-20, and page 9, lines 8-21. No new matter has been added. Thus, claims 1-36 remain pending in this application. In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

As is shown on page 2 of the Office Action, claims 9-15 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office asserts that claims 9-15 are indefinite because they claim a 'system' however it is unclear from the claim language whether the 'system' is actually directed to an apparatus or a method.

In response, Applicants submit that claims 9-15 are system claims directed to an apparatus. In particular, claim 9, as amended, recites a system for identifying latent demand for at least one of a plurality of commodities, the system comprising an offer analyzer comprising at least one computing device that analyzes at least a plurality of initially unaccepted offers for each of the plurality of commodities, and a commodity selector comprising the at least one computing device that selects at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analysis by the offer analyzer. The language of the claim elements clearly indicates that the system is directed to an apparatus. Accordingly, Applicants respectfully request that this rejection of claims 9-15 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In addition, claims 1-30 stand rejected under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the Office asserts that claims 1-30 are directed to non-statutory subject matter because they lack any recitation of technology in the body of the claims, which is required in order to meet the statutory requirements.

In response, Applicants amend independent claims 1, 9, and 24 to recite a “computing device” in the body of the claims. Independent claim 16 is directed to a “computer readable medium” which is within the scope of statutory subject matter. Accordingly, Applicants believe that each of claims 1-36 presently pending in this application meet the requirements of 35 U.S.C. § 101. Therefore, Applicants respectfully request that the rejection of claims 1-30 under 35 U.S.C. § 101 be withdrawn.

As is shown on page 3 of the Office Action, claims 1, 6-9, 14-16, 21-24, 28-31 and 35-36 stand rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (US 5,835,896). Applicants respectfully traverse.

In particular, the Office asserts that Fisher discloses a method for identifying latent demand for at least one of a plurality of commodities, the method comprising analyzing at least a plurality of initially unaccepted offers for each of the plurality of commodities (col. 6, lines 39-67), and selecting at least one of the plurality of commodities to offer for sale which satisfies at least one criteria based on the analyzing (col. 7, lines 1-7).

Generally, Fisher relates to a system and method for conducting a multi-person, interactive auction, in a variety of formats, without using a human auctioneer to conduct the auction. In particular, Fisher teaches an automated system wherein an item scheduled for sale is listed for sale, electronic bid information is received from potential buyers for that item, and the item's listing is updated with the received bid information until the close of the sale. (See col. 6, line 39 through col. 7, line 7, and col. 8, lines 51-53). In addition, Fisher teaches that the price of an item may be adjusted based on parameters such as bidding activity over time and the amounts of bids received (col. 8, lines 56-63).

To the contrary, claim 1 as amended recites a method for identifying latent demand for at least one of a plurality of commodities, the method comprising, analyzing with at least one computing device at least a plurality of initially unaccepted offers for each of the plurality of commodities, and selecting with the at least one computing device at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analyzing.

Fisher fails to teach or suggest “selecting with the at least one computing device at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analyzing,” as is required by independent claim 1. Specifically, Fisher does not teach or suggest that at least one of the plurality of commodities is selected which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analyzing.

Accordingly, because Fisher fails to teach each and every element of claim 1, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 102(b) be withdrawn.

Similarly, Applicants believe that independent claims 9, 16, 24, and 31 are also allowable for at least the reasons stated above. In particular, claim 9 as amended recites a system for identifying latent demand for at least one of a plurality of commodities, the system comprising an offer analyzer comprising at least one computing device that analyzes at least a plurality of initially unaccepted offers for each of the plurality of commodities, and a commodity selector comprising the at least one computing device that selects at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analysis by the offer analyzer.

Furthermore, claim 16 as amended recites a computer readable medium having stored thereon instructions for identifying latent demand for at least one of—a plurality of commodities which when executed by a processor, cause the processor to perform the steps of analyzing at least a plurality of initially unaccepted offers for each of the plurality of commodities, and selecting at least one of the plurality of commodities to offer for sale which satisfies at least one criteria that identifies a latent demand in the selected one of the plurality of commodities based on the analyzing.

Moreover, claim 24 recites a method for selling a commodity, the method comprising analyzing with at least one computing device a plurality of offers for a plurality of commodities in an auction using a determined criteria, selecting with the at least one computing device at least one of the plurality of commodities based on the analysis of the determined criteria that identifies a latent demand in the selected one of the plurality of

commodities, and offering to sell the at least one selected commodity for a price based on an average offer for the commodity.

Additionally, claim 31 recites a system for selling a commodity, the system comprising a commodity analyzing apparatus comprising at least one computing device that analyzes a plurality of offers for a plurality of commodities in an auction using a determined criteria, a commodity selecting apparatus comprising the at least one computing device that selects at least one of the plurality of commodities that identifies a latent demand in the selected one of the plurality of commodities based on the analysis of the determined criteria, and a commodity offering system for offering to sell the selected commodity for a price based on an average offer for the commodity.

As stated above with reference to the rejection of claim 1, Fisher fails to teach or suggest to identify a latent demand. Accordingly, because Fisher fails to teach each and every element of claims 9, 16, 24, and 31, Applicants respectfully request that the rejection of claims 9, 16, 24, and 31 under 35 U.S.C. § 102(b) be withdrawn. Accordingly, by virtue of their dependency on allowable claims 1, 9, 16, 24, and 31, Applicants also respectfully request that the rejection of claims 6-8, 14-15, 21-23, 28-30, and 35-36 be withdrawn.

As is stated on page 6 of the Office Action, the Office has stated that claims 32-34 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims because none of the references disclose dividing each of the average offer for each of the plurality of commodities by a total number of items in each of the plurality of commodities to obtain an analyzed value for each of the plurality of commodities.

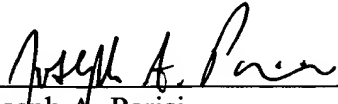
Accordingly, claims 32 and 34 have been rewritten in independent form in accordance with the Office's instructions. Thus, Applicants believe that claims 32 and 34 are now allowable. Claim 33 is also allowable by virtue of its dependency on claim 32.

In view of all of the foregoing, Applicants submit that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

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